

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHRISTOPHER BRANCH,

Petitioner,

v.

No. 15-cv-598-MV/GBW

JOE GARCIA, *Warden*,

Respondent.

REPORT AND RECOMMENDATION

This matter is before me on Petitioner's motion to dismiss without prejudice. *Doc. 12*. I recommend granting his motion.

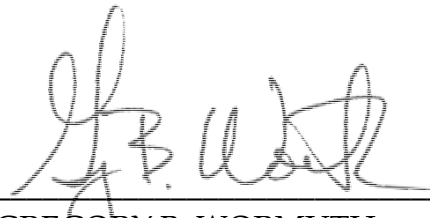
In Respondent's Answer to the Petition, he explained that "the New Mexico Supreme Court has issued a limited remand instructing the state district court to vacate three of Mr. Branch's five convictions and enter an amended judgment and sentence." *Doc. 7* at 1. Thus, "Respondents contend that either (1) dismissing Mr. Branch's 28 U.S.C. § 2254 petition without prejudice, or (2) staying the matter and holding the petition in abeyance for a reasonable period of time pending entry of the amended judgment and sentence would be appropriate." *Id.*

In a later filing, Respondent advised the Court that Petitioner mailed to Respondent a response to the Answer, but, because it was never docketed, apparently not to the Court. *See doc. 10*. Respondent attached Petitioner's response to its filing. *Id.*, Exs. A-C. Petitioner's response asked "this court to grant me time to go back to the state court and exhaust all state remedies." *Id.*, Ex. A.

The undersigned construed Petitioner's response as a motion to stay the proceedings, and given the lack of objection from Respondent, granted it. *Doc. 11*. Therefore, as of October 14, 2015, the case was stayed pending Petitioner's exhaustion of his state court remedies. *Id.*

Subsequently, on October 22, 2015, Petitioner filed the instant motion. He explains that "I had requested a stay but however I may have more issues after my writ of certiorari so I'm requested [sic] to have dismissed without prejudice." Respondent has filed no opposition to the motion. See D.N.M.LR-Civ. 7.1(b) (failure to file response in opposition to motion constitutes consent to grant the motion).

Therefore, I recommend the Petition be dismissed without prejudice.



GREGORY B. WORMUTH

UNITED STATES MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.